

TO: Assessing Officers
Equalization Directors

No. 7 - April 6, 1989
Downtown Development Authority
Property Value Deterioration Requirement

FROM: State Tax Commission

STATE OF MICHIGAN

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DOWNTOWN DEVELOPMENT AUTHORITY: Establishment upon finding
of property value determination

MUNICIPALITIES: Establishment of a downtown
development authority

WORDS AND PHRASES: "Deterioration"

A municipality may establish a downtown development authority upon a factual finding of a deterioration in value of a significant number of parcels in the downtown district within which the authority is to exercise its powers.

Opinion No. 6558

Honorable Margaret O'Connor
State Representative
The Capitol
Lansing, MI 48913

JAN 18 1989

You have requested my opinion on a question relating to the downtown development authority act, MCL 125.1651 et seq; MSA 5.3010(1) et seq (the "DDA Act").

The question may be stated as follows:

Whether § 3(1) of the DDA Act permits a municipality to create a downtown development authority in a geographical area where property values are not declining?

Section 3(1) of the DDA Act defines the requirements for a downtown development authority as follows:

"When the governing body of a municipality determines that it is necessary for

the best interests of the public to halt property value deterioration and increase property tax valuation where possible in its business district, to eliminate the causes of that deterioration, and to promote economic growth, the governing body of that municipality may, by resolution, declare its intention to create and provide for the operation of an authority."
(Emphasis added.)

Language similar to the foregoing § 3(1) of the DDA Act is set forth in § 3(1) of the Tax Increment Finance Authority Act, MCL 125.1801 et seq; MSA 3.540(201) et seq (the "TIFA Act"). Section 3(1) of the TIFA Act provides:

"If the governing body of a municipality determines that it is in the best interests of the public to halt a decline in property values, increase property tax valuation, eliminate the causes of the decline in property values, and to promote growth in an area in the municipality, the governing body of that municipality may declare by resolution its intention to create and provide for the operation of an authority."
(Emphasis added.)

Based on the requirements of § 3(1) of the TIFA Act, OAG, 1985-1986, No 6335, p 208 (January 16, 1986), concluded that a municipality may not establish a tax increment finance authority in an area unless it contains a significant number of parcels of property experiencing a decline in value. Thus, a tax increment finance authority may not be established in an area where property values are not declining.

While § 3(1) of the TIFA Act requires a "decline in property values," § 3(1) of the DDA Act requires "property

value deterioration." There does not appear to be any significant difference between these two formulations.

In OAG, 1985-1986, No 6335, supra, at p 210, it was noted that the term "decline" has been defined as meaning "a falling off or downward tendency." In Laxson v Scarborough, 221 SW 1029, 1030 (Tex Civ App, 1920), the court observed that "deteriorate" is sometimes used as a synonym for "decline." Black's Law Dictionary, 5th Ed (1979) defines "deterioration" to mean: "With respect to values or prices, a decline." Thus, in the context of the DDA Act, the term "property value deterioration" means a decline in property values.

It was also concluded in OAG, 1985-1986, No 6335, supra, at p 210, that a decline in the value of one or two parcels would not satisfy the requirements of § 3(1) of the TIFA Act:

"In view of these broad powers to deal with urban deterioration and to promote the growth of an area of a municipality, the legislative intent is manifest that a significant number of parcels of property in the area of the municipality must be found to be falling off in value in order to warrant the establishment of an authority possessed of wide powers to accomplish the beneficial purposes intended. One or two parcels of property suffering declining property values would not suffice to set in motion the establishment of a tax increment finance authority in a municipality."

The conclusion in OAG, 1985-1986, No 6335, supra, that a decline in value of one or two parcels would not meet the

requirements for establishment of a tax increment finance authority is equally applicable to the provisions of § 3(1) of the DDA Act which similarly require property value deterioration as a prerequisite to the establishment of a downtown development authority.

It is noted that various legislative changes impacting on OAG, 1985-1986, No 6335, supra, occurred in 1986. 1986 PA 280 added § 29 to the TIFA Act which eliminated in subsection (1) the availability of the Act for the formation of new tax increment finance authorities after December 30, 1986, and specified in subsection (2) the suspension in certain instances of the requirement regarding declining property values of § 3(1) of the Act to tax increment finance authorities established prior to December 30, 1986:


"(1) Beginning January 1, 1987, a new authority or authority district shall not be created and the boundaries of an authority district shall not be expanded to include additional land.

"(2) A tax increment finance authority, authority district, development area, development plan, or tax increment financing plan established under this act before December 30, 1986 shall not be invalidated pursuant to a claim that based on the standards set forth in section 3(1), a governing body improperly determined that the necessary conditions existed for the establishment of a tax increment financing authority under this act, if, at the time the governing body established the authority, the governing body could have determined that establishment of an authority under this act would serve to create jobs or promote economic development growth.

"(3) A development area created or expanded after December 29, 1986 shall be subject to the requirements of section 3(1)."

The Legislature also enacted 1986 PA 281, the local development finance act, MCL 125.2151 et seq; MSA 3.540(351) et seq, which provides for local development finance authorities in place of tax increment finance authorities. The local development finance act took effect on February 1, 1987. The Act was considered in Advisory Opinion on Constitutionality of 1986 PA 281, 430 Mich 93; 422 NW2d 186 (1988).

It is my opinion, therefore, that § 3(1) of the downtown development authority act, MCL 125.1653(1); MSA 5.3010(3)(1), authorizes a municipality to establish a downtown development authority upon a factual finding of a deterioration in value of a significant number of parcels in the downtown district within which the authority is to exercise its powers. It is further my opinion that a municipality is not authorized by the Act to establish a downtown development authority based on a deterioration of one or two parcels of property within the downtown district.


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